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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

NO. .....

FOSTER C. WILSON
C. RAY WILSON
MRS. CECIL R. WILSON

VERSUS

COMMERCIAL SECURITIES COMPANY, INC.
COMMERCIAL SECURITIES COMPANY OF
WEST MONROE, INC., CHARLES PUCKETT,
BILLIE BENNETT and BENNETT CURRY

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The Petitioners, Foster C. Wilson, C. Ray Wilson and Mrs. Cecil R. Wilson, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on July 9, 1970. (Rehearing Denied September 14, 1970)

OPINIONS BELOW

There was no formal opinion of the District Court. Excerpts of the transcript in that Court, of the judge's statement on granting judgment in favor of Defendants, are reproduced in Appendix A to this petition. (Appendix A, infra pp. 11).

The opinion of the United States Court of Appeals for the

Fifth Circuit (Appendix B, infra pp. 12) is reported at 429 F 2d. 1305. The Petition for Rehearing was denied September 14, 1970, and the opinion reproduced in Appendix C, (infra pp. 14) is reported at 429 F 2d 1305.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit (Appendix B, infra pp 13) was entered on July 9, 1970. A timely petition for rehearing was denied on September 14, 1970 (Appendix C, infra pp. 14). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1), and there is apparent conflict between the decision which is the subject of this petition and decisions of other United States Courts of Appeal.

QUESTIONS PRESENTED

1. Whether doctrine of pendent jurisdiction will support diversity jurisdiction in cases arising out of the same acts based on State tort law that creates the causes of action for certain survivors of a decedent?

2. Whether, when the case before the Court includes three Plaintiffs, each having separate actions against the same Defendant for damages resulting from the same acts and circumstances, the United States District Court has jurisdiction over the claim of the Plaintiff with them complete diversity with all parties exists, even though the Court dismisses as to the Plaintiffs with whom diversity does not exist?

3. Whether a trial Court has jurisdiction to Dismiss a cause of action on, or consider the Original Complaint, when the case is before the Court on Amended Complaint?

4. Whether a trial Court has jurisdiction to hear and rule upon a motion to dismiss on a date prior to the time afforded

opposing party by rules of the Court to file pleadings and brief answering the motion; further, whether it is error for the Court to place such hearing back on the motion docket after granting motion for continuance?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The constitutional provisions, statutes and rules involved in this case are:

Article III, Section 2, of the United States Constitution;
Tit. 28 U.S.C. Section 1332;
Art. 6:571-6:593 Louisiana Civil Code;
Art. 2315 Louisiana Civil Code;
Rule 15(a) Federal Rules of Civil Procedure;
Rule 20 (a) Federal Rules of Civil Procedure;
Rule 21 Federal Rules of Civil Procedure;
Rule 4, and General Order of the United States District Court for the Western District of Louisiana.

The pertinent text of each of the above referred to constitutional provisions, statutes and rules is set out in Appendix E., infra pp. 18-20.

STATEMENT OF THE CASE

The case originated upon the filing of a complaint by Foster C. Wilson, C. Ray Wilson and Mrs. Cecil R. Wilson, in the United States District Court for the Western District of Louisiana, which complaint was amended and the following procedures were had in the trial Court as reflected in Appendix D, infra pp. 15. The original complaint was filed on June 17, 1969, and July 7, 1969 Defendants filed a Motion to Dismiss. On July 28, 1969, Petitioners filed their Amended Complaints, in one pleading, in accordance with Rule 15(a) Federal Rules of Civil Procedure; the Defendants have never filed responsive pleadings in this cause. On August 7, 1969, Defendants filed their Motion styled, "Motion to Dismiss Amending and Original

Complaints", which motion was set for hearing on August 26, 1969. Petitioners filed their Motion for a Continuance on the ground they were not afforded the time allotted by the Rules of the Court. (Rule 4, U.S. Dist. Ct., W.D. La., and General Order of U.S. Dist. Ct. W. D. of La., Appendix E., infra pp. 20) to file their brief and answer opposing the Motion, which Motion for Continuance was granted by the trial Court on August 19, 1969, and the case was removed from the Motion Calendar of August 26, 1969. On August 25, 1969, Counsel for Petitioners were advised by phone the Court had reset the Motion of Defendants and the same would be heard on August 26, 1969, which Motion was, over objection of Petitioners, heard and the District Court dismissed the action giving lack of jurisdiction as his reason. Petitioners duly appealed the judgment of the trial Court to the United States Court of Appeals for the Fifth Circuit. The opinion and judgment of the Court of Appeals are reproduced in Appendix B, infra pp. 13-14.

This is an action created by R.S. 2315 La. Civ. Code, (Appendix E, infra pp. 18) in tort brought in the United States District Court for the Western District of Louisiana, summarily stated, the Petitioners alleging Mr. Cecil R. Wilson and Mrs. Cecil R. Wilson were husband and wife, and to that marriage two children were born, Foster C. Wilson, a Texas resident, and C. Ray Wilson, a Louisiana resident. That Cecil R. Wilson obtained a loan from the Corporate Defendants, which was governed by the Small Loan Law of Louisiana. R.S. 6:571-6:593, La. Civ. Code (Appendix E, infra pp. 19) which law is allegedly unconstitutional and the note was usurious; further that even though he was never delinquent in the payments on the note, collection tactics used by the Defendant Corporations and the individual Defendants was a cuase of the death of Cecil R. Wilson, and violated guarantees of the United States Constitution.

Each of the Plaintiffs sue in his individual capacity; each, in good faith, alleging damages in excess of $10,000, exclusive of interest and costs.

REASONS FOR GRANTING WRIT

(1) Consideration by this Court is necessary on the independent ground that the holding below conflicts squarely with *Wilson v. American Chain and Cable Co.*, 364 F. 2d 558 (1966) and *Hatridge v. Aetna Casualty and Surety Company*, 415 F. 2d 809 (1969), and conflicts in substance, if not squarely, with *Stone v. Stone* 405 F. 2d 94 (1968), and *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S. Ct., 1130, 16 L. 218; *Bonner v. Sharon Steel Company*, 327 F. 2d 165 (1964); *Jacobson v. Atlantic City Hospital*, 393 F. 2d., 149.

Article III Sec. 2 of the United States Constitution provides in part: "- - - - the judicial power shall extend to all cases, in law and in equity - - - - between citizens of different States, and the Legislature supports that power by the enactment of 28 U.S.C. Sec. 1332. (Appendix E, infra pp. 18).

The underlying purpose of diversity of citizenship legislation is to provide a separate forum for out-of-state citizens, and to give them the benefit of safeguards of the Federal Courts against the prejudices of local courts and local juries.

With the advent of times, so also has federal jurisprudence progressed. One of the inroads that has been made upon the original concepts of diversity of citizenship jurisdiction in the federal judiciary has been the doctrine of pendent jurisdiction.

This Court blazed the trail in the modern day doctrine of pendent jurisdiction in *United Mine Workers v. Gibbs*, 383 U.S. 715, 16 L. Ed. 218, 86 S. Ct. 1130. The principal of pendent jurisdiction was applied, in *Wilson v. American Chain and Cable Company* 364 F. 2d 558, where the action was based on a tort action created by State statutes, the Plaintiffs being father and son, there being diversity jurisdiction as to one of the two claims which arose out of the same accident, acts or factual situation. The same principle was followed in *Hatridge v. Aetna*

Casualty and Surety Company, 415 F 2d 889 (1969).

While pendent jurisdiction may be a doctrine of discretion, and not of right, it makes good sense. It affords a forum for out-of-state citizens, and gives them the benefit of safeguards of the Federal Courts against local prejudices. It avoids forum shopping and multiplicity of actions. It tends to reduce costs to litigants and saves time of the already heavily burdened Courts. It appears the number of courts that follow the principles and guidelines set out in *United Mine Workers v. Gibbs*, 389 U. S. 715, 16 L. ed. 218, 86 S. Ct. 1130, and rule it has jurisdiction over cases such as the one at bar, especially where the Plaintiffs are all members of one family, is fast reaching the majority.

In the case at bar we have three Plaintiffs, one of which is a Texas resident having complete diversity with all the other parties to the action. Plaintiffs' claims are ex-delicto actions for death created by Art. 2315 La. Civ. Code (Appendix E infra pp. 18) giving causes of action to a surviving spouse and to the children of the deceased spouse and parent. The jurisprudence of the State of Louisiana favors, and orders, joinder of actions, which is a procedure patterned after, and an adoption of, Rule 20, Federal Rules of Civil Procedure. (Appendix E, infra pp. 19).

Following the provisions of Article III, section 2 of the United States Constitution (Appendix E, infra pp. 18) and Tit. 28 U.S.C. sec. 1332 (Appendix E. infra pp. 18) the case at bar is a constitutional case as that term is used in the modern day doctrine of pendent jurisdiction.

The case at bar four squares with decisions, and substance of decisions, of the United States Courts of Appeals, such as those cited herein, which decisions follow the principles set forth by this Court, supporting jurisdiction of the Federal Court by the doctrines of pendent jurisdiction. The holding below in the case at bar conflicts squarely and in substance with the rulings of the cases cited herein.

The issue raised by this conflict is of continuing importance and should be resolved by this Court.

(2) It would be a miscarriage of justice and in direct conflict with the Federal Rules and Louisiana jurisprudence. to dismiss a case and calim over which the trial court has jurisdiction, when the Court dismisses actions joined thereto over which no jurisdiction exists.

In the case at bar it is an uncontroverted fact that one of the Plaintiffs, Foster C. Wilson, was at all times material to this civil action a resident of the State of Texas, and that none of the Defendants reside in Texas; further, that he has a claim against Defendants of which, if he sued alone, the trial court would have jurisdiction.

If it were concluded jurisdictional defects existed to the joined claims of the three Plaintiffs herein, then jurisprudence and certainly Rule 21, Federal Rules of Civil Procedure (Appendix E, infra pp. 19) dictates the trial Court should not dismiss the civil action of the out-of-state Plaintiff.

The issue raised by this conflict is of continuing importance and should be resolved by this Court.

(3) Consideration by this Court is necessary on the independent ground that the action of the trial court considering the Original Complaint when the same had been amended, and the holding below conflicts on that issue with *Bullen v. DeBretteville*, C.A. Cal. 1956, 239 F. 2d 824, certiorari denied 77 S. Ct., 825, 353 U. S. 947, 1 L. Ed. 2d 856, *Nisbet v. Van Tuyl*, 224 F. 2d. 66.

In the case at bar Plaintiffs filed their Amended pleading July 28, 1969, (Appendix D, infra pp. 16) in accordance with Rule 15(a) Federal Rules of Civil Procedure (Appendix E, infra pp. 19).

Prior pleadings are in effect withdrawn and become *functus officio* upon the filing of amendments thereto. An amended

pleading supersedes the original, the later thereafter is non existent. It therefore follows, the case at bar could not be dismissed upon Motion to Dismiss Original and Amending Complaint.

The issue raised by this conflict should be resolved by this Court.

(4) The trial court lacked jurisdiction to hear motion prior to the date such motion could be heard in accordance with the Rules of the court, and it was an abuse of discretion for the court to reset the case on the motion docket after granting Plaintiffs Motion for Continuance, and doing so results in conflicts of decisions.

The civil docket of the trail court (Appendix D, infra pp. 15) shows that after Plaintiffs below served the Amended Complaints, in one pleading, upon Defendants, the Defendants filed their motion styled "Motion to Dismiss Original and Amending Complaints" on August 7, 1969, and Plaintiffs were so notified on August 9, 1969. The court set Defendants' motion for hearing on August 26, 1969, a date prior to the time allowed Plaintiffs to prepare and file their pleadings and brief opposing Defendants' Motion. On August 19, 1969, the court granted Plaintiffs' Motion for Continuance and the motion was removed from the Motion Calendar. however, on August 25, 1969, the clerk of the trial court communicated with counsel for Plaintiffs and thereby advised that the court had reset the motion of Defendants to be heard the next day, August 26, 1969.

Rule 4, and General Order, of the United States District Court, W. D. La., the trial court, (Appendix E, infra pp. 20), provides the party opposing a motion shall have twenty-one days after being served with a motion to prepare an answer and brief opposing such motion. The case of *Smith-Welk Machinery Corporation v. Murdock Machine and Engineering Company*, 423 F. 2d 842, supports Plaintiffs' position herein; where the

case was placed on the trial docket and motion for continuance filed on ground lead counsel was ill, and court advised case would not be reached, however, the case was transfered on the docket and trial was had. The Court of Appeals reversed the cause on grounds of abuse and discretion. The case well illustrates the need and gives sound reasoning for the exercise of restraint in the matter of denial of continuances to the end that justice may be done.

In the case at bar, in addition to relying on the rule giving twenty-one days to answer a motion, as in the *Smith-Weik* case, supra. Plaintiffs' Counsel relied upon the continuance granted by the Court on August 19, 1969.

In conformance with fairness and justice, this conflict should be resolved.

CONCLUSION

The decision below is erroneous, and fustrates sound and efficient administration of justice, especially in diversity cases arising out of a common set of acts involving common points of law, where damages will not be duplicated, and Plaintiffs are all members of the same family. For the reasons which have been set forth, certiorari should be granted.

Respectfully Submitted

Edward K. Alexander
P. O. Box 357,
DeQuincy, La.
Foster C. Wilson
P. O. Box 4011
Beaumont, Texas 77706
Attorneys for Petitioners

By

CERTIFICATE OF SERVICE

The foregoing Petition for Writ of Certiorari has been served upon the Respondents herein by mailing 3 true copies of the same to W. F. Pipes, Pipes and Pipes, P. O. Box 1184, Monroe, Louisiana. and 3 true copies of the same to J. Bachman Lee. P. O. Box 1671, Monroe, Louisiana, Attorneys for Respondents, by placing the same in the United States mail properly addressed with sufficient postage affixed thereon.

Beaumont, Texas, this 23rd day of November, 1970.

Foster C. Wilson

APPENDIX A

DISTRICT COURT OPINION

Excerpts of the transcript in the United States District Court for the Western District of Louisiana, including the judge's statement granting defendants' motion to dismiss for lack of jurisdiction: "With respect to the Motion to Dismiss for Lack of Diversity of Citizenship, it is clear that the Court has no jurisdiction. You live in Texas and you are one of the plaintiffs and your mother and brother are Louisiana residents and all the defendants are Louisiana residents. There must be complete diversity of citizenship for all parties. I will grant that motion." (Appendix pp. 30-31). "This Court has no jurisdiction over this case either on the grounds of diversity or on the grounds that there is a federal question involved." (Appendix pp. 31-32).

APPENDIX B

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28957

FOSTER C. WILSON, ET AL.,
Plaintiffs-Appellants,

versus

COMMERCIAL SECURITIES COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

(July 9, 1970)

Before TUTTLE, THORNBERRY and INGRAHAM, Circuit Judges.

PER CURIAM: The judgment of the trial court dismissing this complaint for want of jurisdiction was clearly correct. Of the three plaintiffs named in the complaint, two were residents of Louisiana. At least three of the four defendants were residents of the same state. Obviously, therefore, there was no diversity jurisdiction in the district court. It is equally clear that appelants' contention that the complaint was based on a case "arising under the constitution, laws or treaties of the United States" is incorrect. The action here was one based strictly on tort under the laws of the State of Louisiana.

The judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1969

No. 28957

D. C. Docket No. CA 14-741

FOSTER C. WILSON, ET AL.,
Plaintiffs-Appellants,

versus

COMMERCIAL SECURITIES COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

Before TUTTLE, THORNBERRY and INGRAHAM, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that plaintiffs-appellants pay to defendants-appellees, the costson appeal to be taxed by the Clerk of this Court.

July 9, 1970

APPENDIX C

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28957

FOSTER C. WILSON, ET AL.,
Plaintiffs-Appellants,

versus

COMMERCIAL SECURITIES COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(September 14, 1970)

Before TUTTLE, THORNBERRY and INGRAHAM, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX D

CIVIL DOCKET 14-741

UNITED STATES DISTRICT COURT

Jury demand date: NJ

MONROE

Title of Case **Attorneys**

FOSTER C. WILSON;
C RAY WILSON and MRS. CECIL R. WILSON

For plaintiff:

Edw. K. Alexander, PO Box 357, DeQuincy, La.;
and
Foster C. Wilson, 3315 N. Willowood Ln.
Beaumont, Texas 77703, Ph 892-4599

VS

COMMERCIAL SECURITIES COMPANY, INC.;
COMMERCIAL SECURITIES COMPANY OF
WEST MONROE, INC.;
CHARLES PUCKETT; BILLIE BENNETT;
and EMMETT CURRY

For defendant:

Pipes & Pipes, W. F. Pipes, PO Box 1184,
Monroe, La. 71201 Ph FA 54631
and
J. Bachman Lee, PO Box 1671, Monroe, La.

Date	Proceedings
6-17-69	Original complaint filed.
6-19-69	Original summonses (5) with copies for service, issued.

7-7-69 Motion by Defts. to dismiss for lack of requisite diversity of citizenship filed.

7-8-69 Brief by Defts. in support of 7-7-69 motion to dismiss, filed.

7-17-69 Return on summons (4), filed: Emmett Curry; Billie Bennett, Charles Puckett; and Commercial Sec. Co. all served 7-23-69.

7-24-69 Return on summons, filed: Commercial Sec. served 7-10-69.

7-28-69 Plaintiff's amended complaint & certificate of service, filed.

7-28-69 Answer by plaintiffs opposing defendants' motion to dismiss filed.

7-28-69 Brief by plaintiffs in opposition to defendants' motion to dismiss, filed.

8-7-69 Motion by all defendants to dismiss amending and original complaint with attached brief in support thereof, filed.

8-19-69 Motion by plaintiffs for a continuance of hearing set for August 26, 1969; brief in support thereof with attachments; and HANDWRITTEN ORDER OF JUDGE DAWKINS REMOVING CASE FROM the Motion Calendar at Monroe, La. for August 26, 1969, filed. (BCDJR) Notice of entry given by Clerk 8-19-69 to Mr. Pipes, Mr. Foster, & Mr. Alexander by mailing copies of this entry to them.

8-26-69 Answer by plaintiffs opposing Defendants' motion to dismiss amending and original complaint; and Brief of Plaintiffs on defendants' motion to dismiss amending and original complaints, filed.

8-26-69 On motion of WF Pipes, ordered that Bachman Lee be enrolled as associate counsel for Defts. Counsel for Pltf. orally moved for continuance of motion hearing & same was denied. Motions by Defts. to dismiss for lack of requisite diversity of citizenship were taken up, submitted and order that the motions be granted and the case dismissed. (BCDJR) Notice of entry

given.

9-24-69 Plaintiff's Notice of Appeal from Court's Orders of 8-26-69, filed. Copies thereof mailed by Clerk 9-24-69 to Mr. J. Bachman Lee and Mr. W. F. Pipes. Clerk received this date for deposit in the registry of Court $250.00 in cash as plaintiff's bond for Costs on Appeal.

9-26-69 On INSTRUCTIONS OF JUDGE BEN C. DAWKINS, JR. the minutes of Court in this case for August 26, 1969, are hereby corrected, in part, so that the last sentence thereof will read as follows: "Motions to dismiss for lack of requisite diversity jurisdiction and for lack of a substantial Federal Questions were taken up, submitted and ordered that the motions be granted and the case DISMISSED." (BCD JR) Notice of entry given by Clerk on 9-26-69 by mailing copies of this entry to Messrs. Foster, Alexander, Pipes & Lee.

10-16-69 Motion by plaintiffs and order extending time in which record on appeal may be filed & docketed with Clerk of Court of Appeals for 50 days from 11-3-69, filed. (BCD JR) Notice of entry given By Clerk on 10-17-69 by mailing copies of this entry to Mr. Wilson, Mr. Lee, and Mr. Pipes. Original thereof mailed by Clerk to KClerk of Court of Appeals.

10-27-69 Motion by plaintiffs to vacate the instructions of Judge Ben C. Dawkins, Jr. to the Clerk on 9 - 26 - 69, certificate of service, and order of Judge Ben C. Dawkins, Jr. (handwritten) as follows, filed: "Motion D enied. 10-29-69, /s/ Ben C. Dawkins, Jr., Judge.", filed. (BCD JR) Notice of entry given by Clerk on 10-27-69 by mailing copies of this entry to Messrs, Wilson, Lee & Pipes.

APPENDIX E

1. Article III, Sec. 2, of the United States Constitution provides in pertinent part as follows:

> "The judicial power shall extend to all cases, in Law and in Equity - - - between citizens of different States;"

2. The statute describing the situations in which the judicial power of the Federal Courts includes cases between citizens of different States, 28 USC sec. 1332, reads in pertinent part as follows:

> "The District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between - - - -
>
> (1) citizens of different States;"

3. Art. 2315, Liability for acts causing damage; survival of action.

Art. 2315, provides in pertinent part as follows:

"Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

The right to recover damages to property caused by an offense or quasi offense is a property right which, on death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; - - - - . The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful

death of the deceased." Vol 9, Louisiana Statutes Ann. Civil Code pp. 15 cumulative annual pocket part for 1970.

4. Amended and Supplemental Pleadings.

   (a) Amendments. "A party may amend his pleading once as a matter of course at any time before a reponsive pleading is served, - - - - - -." Rule 15(a) Federal Rules of Civil Procedure.

5. Purmissive Joinder of Parties.

   (a) Purmissive Joinder. "All persons may join in one action as Plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. - - - - - Judgment may be given for one or more of the Plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities." Rule 20, Federal Rules of Civil Procedure.

6. Misioinder and Non-joinder of Parties.

   "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately." Rule 21, Federal Rules of Civil

7. Art. 6:571 - 6:593, La. Civ. Code, Louisiana Small Loans, Vol. 2, Louisiana Revised Statutis, Ch. 7 pp. 242 - 273, and Cumulative Annual Pocket Part for 1970, pp. 20 - 25.

8. Rules of the United States District Court for the Western District of Louisiana, provides:

Rule 4. (Motions) "As amended July 27, 1969, Sec. 1, Filing. A written brief, containing movants complete argument, and authorities relied on, in support of each motion, shall be filed simultaneously with the motion. Otherwise, the motion may be denied summarily, without hearing.

Sec. 2. Motion Days. To be fixed by the Clerk upon order of the Court."

General Order Regarding Civil and Criminal Motions.

"Heretofore, by mimeographed notice, mailed by the Clerk to all counsel who regularly practice in this Court, we have issued an Order requiring that each motion or exception filed, prior to or subsequent to answer upon the merits, must be accompanied by a brief in support of such motion or exception. This has been most helpful to the Judges of this Court in reviewing records placed upon our various motion calendars.

However, in order to improve and expedite action upon such motions or exceptions, this Court now supplements its earlier Order in that respect, and requires that counsel for opponents or respondents of any such motion or exception file a reply brief within twenty-one days following service upon them of such motions or exceptions. Failure to do so will empower or may persuade the Court to enter such sanctions, or take such actions, as may be authorized by law, or by the Federal Rules of Civil or Criminal Procedure."